Supreme Court, U.S.
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No. 01-1168

IN THE

Supreme Court of the United States

MICHAEL E. TINDALL,

Petitioner,

v.

WAYNE COUNTY FRIEND OF THE COURT, WAYNE COUNTY SHERIFF'S DEPARTMENT, and WAYNE COUNTY CIRCUIT COURT, FAMILY DIVISION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT WAYNE COUNTY CIRCUIT COURT, FAMILY DIVISION

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QUESTION PRESENTED

Should this Court deny certiorari to review whether the Sixth Circuit Court of Appeals properly held that the District Court was required to abstain from reviewing the constitutionality of the practices and procedures applied to the Petitioner by a state court to enforce the state court's own orders when: (1) the rule of law applied by the Sixth Circuit does not conflict with the decisions of any other Circuit Court or of this Court; (2) the Sixth Circuit properly applied the *Younger* abstention doctrine to the Petitioner's claims; (3) the Petitioner's claims are barred by the Eleventh Amendment; and (4) the Petitioner's claims are moot?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Cited Authorities	iii
Statement of the Case	1
Reasons for Denying the Writ	4
A. The Petition Does Not Raise Any Issues Beyond An Alleged Misapplication Of The Law.	5
B. The Sixth Circuit Properly Applied The *Younger* Abstention Doctrine.	6
C. Plaintiff's Claims Are Barred By The Eleventh Amendment To The United States Constitution.	10
D. Plaintiff's Claims Are Moot.	12
Conclusion	15

TABLE OF CITED AUTHORITIES

Page

Cases:

Abick v. State of Michigan, 803 F.2d 874 (6th Cir. 1986) 10

Ballard v. Wilson, 856 F.2d 1568 (5th Cir. 1988) .. 6

Carras v. Williams, 807 F.2d 1286 (6th Cir. 1986) ... 12

Davila v. State of Texas, 489 F. Supp. 803 (S.D. Tex. 1980) 7

Employees of the Dep't of Pub. Health & Welfare v. Missouri Dep't of Pub. Health & Welfare, 411 U.S. 279 (1973) 10

Estate of Ritter v. University of Michigan, 851 F.2d 846 (6th Cir. 1988). 10

Ford Motor Co. v. Dep't of Treasury, 323 U.S. 459 (1945). 11

Hawaii v. Gordon, 373 U.S. 57 (1963) 11

Juidice v. Vail, 430 U.S. 327 (1977) 5

Kirschner, D.D.S. v. Klemons, D.D.S., 225 F.3d 227 (2d Cir. 2000) 5, 6

Kugler v. Helfant, 421 U.S. 117 (1974). 7

Cited Authorities

	Page
McPherson v. Michigan High School Ath. Ass'n, 119 F.3d 453 (6th Cir. 1997)	12
Moore v. Sims, 442 U.S. 415 (1979)	9
Mumford v. Basinski, 105 F.3d 264 (6th Cir. 1997)	10
Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc., 477 U.S. 619 (1986)	8
Pennhurst State School and Hosp. v. Halderman, 465 U.S. 89 (1984)	10, 11
Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987)	5
Perez v. Ledesma, 401 U.S. 82 (1971)	7
Port Authority Trans-Hudson Corp. v. Feeney, 495 U.S. 299 (1990)	10
Powell v. McCormack, 395 U.S. 486 (1969)	12
Shaw v. Garrison, 467 F.2d 113 (5th Cir. 1972)	8
Tindall v. Wayne County Friend of the Court, 269 F.2d 534 (6th Cir. 2001)	1, 2
United States Parole Comm'n v. Geraghty, 445 U.S. 388 (1980)	12

Cited Authorities

	Page
Weitzel v. Div. of Occup. & Prof. Licensing of the Dep't of Commerce of the State of Utah, 240 F.3d 871 (10th Cir. 2001)	6
Will v. Michigan Dep't of State Police, 491 U.S. 57 (1989)	11
Wilson v. Thompson, 593 F.2d 1375 (5th Cir. 1979)	7
Worldwide Church of God, Inc. v. State of California, 623 F.2d 613 (9th Cir. 1980)	6
Younger v. Harris, 401 U.S. 37 (1971)	*passim*
Constitutional Amendment:	
U.S. Const. amend. XI	*passim*
Rules:	
Sup. Ct. R. 10	4, 5

STATEMENT OF THE CASE

Plaintiff-Petitioner, Michael Tindall ("Plaintiff") is a licensed attorney who has represented himself throughout the proceedings in this case. Plaintiff was divorced in 1991, at which time he was ordered by the Defendant-Respondent Wayne County Circuit Court, Family Division (the "Circuit Court") to pay support for his minor children. Since that time, he has been subjected to at least eight separate enforcement proceedings to collect his delinquent court ordered child support obligations. *Tindall v. Wayne County Friend of the Court*, 269 F.2d 534, 535, 536 (6th Cir. 2001). In short, "[Plaintiff] is a noncustodial parent who has continually and inexplicably failed to comply with court orders requiring him to make support payments for his minor children." *Id.* at 535.

Rather than comply with the Orders to support his children, or follow proper state court procedures for contesting them, Plaintiff instead has engaged in repeated improper collateral attacks on the practices and procedures utilized by the Circuit Court to enforce these Orders.[1]

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1. For example, prior to filing suit in the District Court, Plaintiff filed Complaints for Superintending Control in the Michigan Court of Appeals and the Michigan Supreme Court, both of which were summarily dismissed. *See Tindall, supra*, at 537. Subsequent to filing his Complaint in the District Court, Plaintiff filed in the Ingham County Circuit Court a Class Action Complaint against the State of Michigan, the Michigan Friend of the Court Bureau, the Wayne County Circuit Court and Friend of the Court and the Circuit Courts and Friends of the Court of six other counties, alleging several claims that were virtually identical to the claims he alleged in the District Court. A copy of this Class Action Complaint is included in Petitioner's Appendix, Vol. II. The Ingham County Circuit Court, which does not have jurisdiction to review the practices and

(Cont'd)

This case is another one of those improper collateral attacks. Plaintiff's Petition for a Writ of Certiorari should be denied because the Sixth Circuit correctly held that the District Court should have abstained from reviewing any of Plaintiff's objections to the practices and procedures followed by the Circuit Court.

The enforcement proceeding that triggered Plaintiff's Complaint in the District Court was instituted when the Defendant-Respondent Wayne County Friend of the Court ("Friend of the Court")[2] served Plaintiff with a Notice of Hearing. This Notice of Hearing informed Plaintiff that the Friend of the Court "would seek an order suspending his license to practice law for his failure to pay court-ordered child support." *Id.* at 537. After receiving this Notice, Plaintiff "filed no motion to quash the notice, failed to appear at the hearing, and did not otherwise raise a challenge to it in state court, but proceeded instead to federal court to file the lawsuit presently before us." *Id.* It is significant to note that during the myriad of child support enforcement proceedings that have been brought against the Plaintiff, he never raised the constitutional challenges to the proceedings that he makes in this case, nor did he take any appeals from those proceedings to challenge the procedures followed by the Circuit Court.

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procedures of another circuit court, dismissed Plaintiff's Complaint. It also held that Plaintiff's claims were frivolous, and awarded attorney fees and costs to all defendants. A copy of this Opinion and Order is included in Petitioner's Appendix, Vol. III. Plaintiff subsequently filed bankruptcy and avoided paying the attorney fees and costs.

2. The Friend of the Court is an arm of the Circuit Court.

The District Court reviewed the procedures that were allegedly followed by the Circuit Court when issuing Orders to Show Cause and Bench Warrants against non-custodial parents who fail to comply with child support Orders, and who fail to appear at the show cause hearings. After reviewing these procedures, the District Court declared them to be an unconstitutional violation of the right to due process guaranteed by the Fourth Amendment of the United States Constitution. While the District Court noted that the *Younger* abstention doctrine[3] required it to abstain from reviewing the practices and procedures of the Circuit Court, the District Court erroneously concluded that, because it found the practices and procedures to be unconstitutional, the bad faith exception to *Younger* had been met.

On appeal, the Sixth Circuit Court of Appeals vacated the judgment of the District Court, holding that the District Court should have abstained from reviewing Plaintiff's constitutional challenges to the Circuit Court's practices. The Sixth Circuit observed that Plaintiff could have, but did not, challenge the constitutionality of the alleged practices and procedures followed by the Circuit Court. Thus, the Sixth Circuit concluded that Plaintiff had an adequate opportunity in the state court to assert his constitutional challenges to the state court proceedings and that the District Court should have abstained from reviewing the merits of those challenges.

Plaintiff now has petitioned this Court to grant a writ of certiorari. Plaintiff does not claim that the Sixth Circuit's opinion sets forth a rule of law that conflicts with the opinions from any other circuits or that is contrary to any opinions of

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3. The *Younger* abstention doctrine was established in *Younger v. Harris*, 401 U.S. 37 (1971).

this Court. Plaintiff merely claims that the Sixth Circuit erred in its application of the bad faith exception to the *Younger* abstention doctrine. An alleged misapplication of a properly stated rule of law is rarely a sufficient reason to grant certiorari. *See* Sup. Ct. R. 10. Accordingly, the Petition should be denied.

Additionally, this case does not present one of those rare instances where the Court might grant certiorari to correct a significant error by the lower court. As is fully explained below in the reasons why the writ should be denied, the Sixth Circuit did not commit any error in applying the *Younger* abstention doctrine, much less an error of such magnitude that this Court should exercise its supervisory powers. Moreover, regardless of the correctness of the Sixth Circuit's opinion, Plaintiff's Petition should be denied because Plaintiff's claims are asserted against an arm of the state and are barred by the Eleventh Amendment to the United States Constitution. Finally, Plaintiff's Petition also should be denied because Plaintiff's divorce case has been transferred to the Macomb County Circuit Court, which means that he is no longer subject to the practices and procedures to which he objects and his claims are moot.

REASONS FOR DENYING THE WRIT

There are four reasons why the Court should deny Plaintiff's Petition for Writ of Certiorari: (1) the Petition does to raise any issue other than whether or not the Sixth Circuit committed error when it applied the *Younger* abstention doctrine to Plaintiff's claims; (2) the Sixth Circuit properly applied the *Younger* abstention doctrine to Plaintiff's claims; (3) Plaintiff's claims are barred by the Eleventh Amendment to the United States Constitution; and (4) Plaintiff's claims are moot. The following more fully elaborates on each of these reasons.

A. THE PETITION DOES NOT RAISE ANY ISSUES BEYOND AN ALLEGED MISAPPLICATION OF THE LAW.

Rule 10 of the Rules of the Supreme Court of the United States makes it clear that "[a] petition for a writ of certiorari will be granted only for compelling reasons." Compelling reasons include: conflicts in decisions between the Circuit Courts of Appeal; departures that are so far from the accepted and usual course of judicial proceedings that they call for an exercise of this Court's supervisory powers; and opinions by state supreme courts and federal courts of appeal that decide a federal question that has not been reviewed by this Court or that decide a federal question in a manner that conflicts with decisions from this Court. *Id.* There is no compelling reason presented in this case.

In the case at bar, the Sixth Circuit Court of Appeals applied the well established *Younger* abstention doctrine and held that the District Court was required to abstain from reviewing the procedures that were allegedly applied to a state court litigant who could have, but did not, challenge those procedures in the state court. The Sixth Circuit's decision is consistent with decisions from the other courts of appeal, and follows decisions issued by this Court. *See, e.g., Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987) (when the "challenges relate to pending state proceedings, proper respect of the ability of state courts to resolve federal questions presented in state-court litigation mandates that the federal court stay its hand); *Juidice v. Vail*, 430 U.S. 327, 337 (1977) ("Here it is abundantly clear that appellees had an opportunity to present their federal claim in the state proceedings. No more is required to invoke *Younger* abstention."); *Kirschner, D.D.S. v. Klemons, D.D.S.*, 225 F.3d

227, 235 (2d Cir. 2000) ("*Younger* abstention is required unless " 'it plainly appears' " that the federal claim cannot be determined in the state proceeding"); *Ballard v. Wilson*, 856 F.2d 1568, 1571 (5th Cir. 1988) ("intervention is only appropriate when a party has no *opportunity* to present his federal claim in a state proceeding" (emphasis by the court)); *Worldwide Church of God, Inc. v. State of California*, 623 F.2d 613, 615-16 (9th Cir. 1980) (*Younger* abstention requires a party to "exhaust its state appellate remedies . . . before seeking relief in a federal court"); *Weitzel v. Div. of Occup. & Prof. Licensing of the Dep't of Commerce of the State of Utah*, 240 F.3d 871, 875 (10th Cir. 2001) (the district court must abstain "when a state forum provides an adequate avenue for relief"). Thus, in this case there is no conflict between the Circuits, no departure from accepted practices, and no decision on federal questions that this Court has not reviewed or that conflict with decisions from this Court. Accordingly, Plaintiff's Petition should be denied.

Moreover, even if this Court were inclined to review the merits of this case, the following shows that the Sixth Circuit properly applied the *Younger* abstention doctrine, and did not commit any error that this Court could correct.

B. THE SIXTH CIRCUIT PROPERLY APPLIED THE *YOUNGER* ABSTENTION DOCTRINE.

The Sixth Circuit reversed the District Court's holding that two of Plaintiff's claims fell within the bad faith exception to the abstention doctrine. Even though Plaintiff cannot dispute that he never used, much less exhausted, his state court remedies, Plaintiff erroneously argues that the Sixth Circuit should have found the bad faith exception to *Younger* abstention applicable. The types of actions that

satisfy this exception were described in *Davila v. State of Texas*, 489 F. Supp. 803, 808-09 (S.D. Tex. 1980):

> 5. The second broad exception to the *Younger* rule is the bad faith or harassment exception. Precedent suggests that this exception can take several forms. . . . First, the Supreme Court in *Perez v. Ledesma*, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed.2d 701 (1971) described the exception to involve "proven harassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction." *Id.* at 85, 91 S.Ct. at 677. *See also Kugler v. Helfant*, 421 U.S. 117, 126 at fn. 6, 95 S.Ct. 1524, 1531 at fn. 6, 44 L.Ed.2d 15 (1974). . . . The fact that [an individual] would be required to defend himself in a single state court prosecution is not sufficient to create an exception to the *Younger* rule. 401 U.S. at 46, 91 S.Ct. at 751.
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> 6. The second variation under the bad faith exception involves situations where a state prosecution is directly designed to retaliate against or deter one from exercising a protected constitutional right. *Wilson v. Thompson*, 593 F.2d 1375 (5th Cir. 1979). Plaintiff does not claim that this situation exists in the present case and the Court can find no evidence of it.
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> 7. A third variety of bad faith involves unreasonably severe and harsh state prosecutorial conduct when balanced against a relatively minor offense, together with possible overtones of racial or ethnic prejudice. . . .

> 8. The next variation under the bad faith exception appears to be one where the overall totality of the circumstances are such as to warrant a finding of bad faith. *Shaw v. Garrison*, 467 F.2d 113 (5th Cir. 1972). There, the district court had specifically found that he was not dealing with a single good faith prosecution but instead characterized the facts as being "unique and bizarre." . . .

This review of the types of actions that fall within the bad faith exception shows that the issue of bad faith relates to the motivations for the prosecutions. The issue of bad faith does not relate to challenges to the procedures that are applied to prosecutions brought it good faith. The bad faith exception to the abstention doctrine is narrowly construed, and is not to be applied "except in the very unusual situation that an injunction is necessary to prevent great and immediate irreparable injury." *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 626 (1986).

Here, even if there was merit to Plaintiff's allegations that the Circuit Court permits the Friend of the Court to issue orders to show cause and bench warrants without judicial supervision when child support payers fail to pay their support or appear at hearings, which the Circuit Court vehemently denies, such actions would not meet the definition of bad faith. This is because there is no allegation, nor was there any finding by the District Court, that the child support enforcement proceedings were brought in bad faith to harass the Plaintiff.

In this case, the District Court reviewed the merits of Plaintiff's constitutional challenges to the Circuit Court's

practices and procedures and concluded that if the bench warrants and orders to show cause were issued without judicial supervision, then Plaintiff's rights to due process guaranteed by the Fourteenth Amendment were violated. After reviewing the merits of Plaintiff's constitutional challenges, the District Court erroneously concluded that if Plaintiff's due process rights were being violated, then he was being prosecuted in bad faith, regardless of the motivation or intent of the prosecution and regardless of whether the Plaintiff had an opportunity to challenge the allegedly unconstitutional procedures in the state court action. This is not the standard for bad faith, because this Court has made it clear that the bad faith exception to abstention is not available when the alleged constitutional violations that comprise the alleged bad faith can be addressed adequately in the state appellate courts. *Moore v. Sims*, 442 U.S. 415, 432 (1979).

Based on the foregoing, the Sixth Circuit did not err when it concluded that the bad faith exception to *Younger* abstention did not apply, or when it held that the District Court should have abstained from ruling on the merits of Plaintiff's claims. Moreover, even if the Sixth Circuit had erred, Plaintiff's Petition for a Writ of Certiorari must still be denied because there is no relief that can be afforded to Plaintiff even if the Sixth Circuit is reversed. This is because the Eleventh Amendment bars the relief Plaintiff seeks and because Plaintiff's claims have become moot.

C. PLAINTIFF'S CLAIMS ARE BARRED BY THE ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The district court did not have subject matter jurisdiction over Plaintiff's claims because the Eleventh Amendment to the United States Constitution prohibits a federal court from exercising jurisdiction over a claim made by a citizen against a state. A state court, such as the Circuit Court here, is an arm of the state and is entitled to Eleventh Amendment protection. *Abick v. State of Michigan*, 803 F.2d 874 (1986); *Mumford v. Basinski*, 105 F.3d 264 (1997), *cert. denied*, 522 U.S. 914 (1997).[4] This Court "has drawn upon principles of sovereign immunity to construe the Amendment to 'establish that "an unconsenting State is immune from suit brought in federal courts by her own citizens as well as by citizens of another state." ' " *Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 304 (1990) (quoting *Pennhurst State School and Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (quoting *Employees of the Dep't of Public Health & Welfare v. Missouri Dep't of Public Health & Welfare*, 411 U.S. 279, 280 (1973))). This Court has also made it "clear, of course, that in the absence of consent, a suit in which the State or one if its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984).

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4. The Eleventh Amendment may be raised as a defense at any time, and may be raised for the first time on appeal. *Estate of Ritter v. University of Michigan*, 851 F.2d 846 (6th Cir. 1988). The Eleventh Amendment was briefed and argued in the Sixth Circuit. However, because the Sixth Circuit decided the case on the basis of abstention, it did not reach the issue of the Eleventh Amendment.

The State of Michigan has never consented to permit a disgruntled state court domestic relations litigant to sue it in federal court.[5] Furthermore, the naming of Judges Kelly and Sapala in the caption does not preclude the Eleventh Amendment prohibition against suit. As Plaintiff himself admitted during the lower court proceedings, Judges Kelly and Sapala were named solely as nominee representatives of the Circuit Court and no relief is sought from either of them individually. "The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." *Hawaii v. Gordon*, 373 U.S. 57, 58 (1963) (per curiam). *See also Will v. Michigan Dep't of State Police*, 491 U.S. 57, 71 (1989); *Pennhurst* at 101-102 (quoting *Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 459, 464 (1945)).

Here, because the relief Plaintiff seeks is the enjoining of the Circuit Court from engaging in specific action, the relief sought is against the State, not against any individual state official in his or her individual capacity, and Plaintiff's claims are barred. Further, even if not barred, Plaintiff's claims now are moot.

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5. The fact that plaintiff filed his suit as a 42 U.S.C. § 1983 action does not provide relief from Eleventh Amendment immunity. The Supreme Court spoke directly to this issue in *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989), stating: "Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties." The *Will* court concluded that the "Eleventh Amendment bars such suits unless the State has waived its immunity." *Id.*

D. PLAINTIFF'S CLAIMS ARE MOOT.

Plaintiff admits in his Petition that at his request his divorce action has been transferred out of the Wayne County Circuit Court and is now pending in the Macomb County Circuit Court. The transfer was conducted through Orders duly made and entered on the docket of the Circuit Court. Plaintiff included copies of those Orders in Appendix, Vol. I, Exhibits E and F, pp. 78-85. The Orders show that, at Plaintiff's request, his case was being transferred to another county. Thus, the transfer was not made pursuant to any "secret" orders as stated in Plaintiff's Petition, nor was it something that was orchestrated by the Circuit Court to moot the Plaintiff's claims. Nevertheless, as a result of the transfer, Plaintiff is no longer subject to the practices and procedures of the Circuit Court and his claims are moot.

A case becomes moot when the relief sought, if granted, would not make a difference in the legal interest of the parties. *McPherson v. Michigan High School Ath. Ass'n*, 119 F.3d 453, 458 (6th Cir. 1997). "[M]ootness has two aspects: 'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.' " *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). Stated another way, "[m]ootness results when events occur during the pendency of a litigation which render the court unable to grant the requested relief." *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986). Here the transfer to Macomb County rendered the Wayne County Circuit Court incapable of taking any action with respect to Plaintiff's divorce action. Hence, after the transfer the Circuit Court could not render any relief on Plaintiff's claims and Plaintiff's claims became moot. Accordingly, the Circuit Court filed

suggestions of mootness in the District Court and the Sixth Circuit Court of Appeals.

Plaintiff's Petition suggests that Plaintiff's claims are not moot because there allegedly are "collateral consequences" remaining from the time before the Wayne County Circuit Court transferred his case. The "collateral consequences" include: the appointment of a receiver to try to collect Plaintiff's delinquent child support obligations; an allegedly unauthorized adjustment to Plaintiff's child support account; and an Order to pay medical expenses and sanctions. The Petition goes so far as to misrepresent that the Order transferring his divorce case to Macomb County "expressly preserved, by its terms, the collateral consequences of receivership, sanctions, and, illegal account adjustments flowing directly from Respondent's [allegedly] unconstitutional conduct." (Petition pp. 20-21). This representation is patently false.

Prior to entry of the Order transferring Plaintiff's case to Macomb County, Plaintiff had moved the Court to dissolve the receivership, to set aside an order to pay medical expenses and sanctions, and to reverse unauthorized adjustments to his child support account. In the Order transferring Plaintiff's case to Macomb County, the Wayne County Circuit Court ordered that this motion was "adjourned to be heard following reassignment of this case" to Macomb County. Thus, the Circuit Court did not "expressly preserve" these "collateral consequences"; it merely deferred them to the Macomb County Circuit Court after Plaintiff moved to have his case transferred out of Wayne County. Plaintiff is free to have all of these alleged "collateral consequences" reviewed in the state court simply by moving the Macomb County Circuit Court to review them. If he is not satisfied with the Macomb

County Circuit Court's disposition of them, he can appeal to the Michigan Court of Appeals and to the Michigan Supreme Court.

Shortly before the Sixth Circuit issued its opinion vacating the District Court's judgment on abstention grounds, the District Court issued an opinion in which it held that Plaintiff's claims were moot, and requested remand from the Sixth Circuit to vacate the judgment and dismiss the Plaintiff's Complaint for that reason. Plaintiff included a copy of this opinion in Appendix, Vol. I, Exhibit D, pp. 54-77. Thus, even if this Court would grant the Petition, reverse the Sixth Circuit, and find that the Eleventh Amendment did not apply, mootness still would require the dismissal of Plaintiff's claims.

CONCLUSION

Plaintiff's Petition for Writ of Certiorari should be denied because it presents no more than an unfounded claim that the Sixth Circuit erred in its application of the *Younger* abstention doctrine. Further, the Petition also should be denied because even if this Court were to grant certiorari and were to reverse the Sixth Circuit, Plaintiff still could not receive the relief he seeks because his claims are barred by the Eleventh Amendment to the United States Constitution and because his claims are moot. For all of the foregoing reasons, Defendant-Respondent Wayne County Circuit Court, Family Division, respectfully requests that this Court deny Plaintiff's Petition for Writ of Certiorari.

Respectfully submitted,

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